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37/22. Equality and non-discrimination of persons with disabilities and the right of persons with disabilities to access to justice

The Human Rights Council,

Recalling the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto,

Recalling also the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed the full enjoyment of their rights and freedoms without discrimination,

Reaffirming all of its previous resolutions on the rights of persons with disabilities, the most recent of which was resolution 31/6 of 23 March 2016 on the rights of persons with disabilities in situations of risk and humanitarian emergencies, and welcoming the efforts of all stakeholders to implement those resolutions,

Recalling General Assembly resolution 72/162 of 19 December 2017 on the implementation of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto: situation of women and girls with disabilities,

Reaffirming that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

Recalling in particular that article 5 of the Convention reaffirms that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law, and provides that States shall prohibit all discrimination on the basis of disability, guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds and, in order to promote equality and eliminate discrimination, shall take all appropriate steps to ensure that reasonable accommodation is provided,

Recalling in that regard that specific measures that are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination,

Mindful that any distinction, exclusion or restriction on the basis of disability that has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political,

economic, social, cultural, civil or any other field constitutes discrimination on the basis of disability, which includes the denial of reasonable accommodation,

Recognizing that participation, accountability, non-discrimination and empowerment are fundamental principles of a human rights-based approach to disability, and noting article 3 of the Convention in that regard,

Mindful of the need to incorporate a gender perspective in all efforts to promote the full enjoyment by persons with disabilities of human rights and fundamental freedoms,

Recalling the general principles reflected in the Convention, namely, non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of persons with disabilities as part of human diversity and humanity, equality between men and women, and respect for the evolving capacities of children with disabilities,

Emphasizing that the enjoyment of equality and non-discrimination and the right to effective access to justice on an equal basis with others are closely linked to the enjoyment of the full range of human rights by persons with disabilities,

Recognizing that progress has been made, yet deeply concerned that many persons with disabilities in all regions continue to face significant obstacles in achieving equality and non-discrimination, and effective access to justice on an equal basis with others,

Emphasizing that taking all appropriate steps to ensure the provision of reasonable accommodation is essential to promoting equality and eliminating discrimination,

Deeply concerned that girls and women of all ages with disabilities are subject to multiple, aggravated or intersecting forms of discrimination that affect their enjoyment of their human rights, including their ability to have access to justice on an equal basis with others, and that those forms of discrimination stem from harmful stigma and stereotypes based on gender and disability, and bearing in mind the risk of segregation, violence and abuse, including sexual violence and abuse, against women and girls with disabilities, including that occurring in the home, in families, in institutions and carried out by support providers,

Deeply concerned also at the negative impact of those laws and practices on the rights of persons with disabilities that provide inadequate support to such persons to exercise their legal capacity on an equal basis with others, which has a negative impact on the enjoyment of equality and non-discrimination and in some cases that deny their right to effective access to justice on an equal basis with others or allow for their forced institutionalization on the basis of a real or perceived disability,

Emphasizing that access to procedural and age-appropriate accommodations is essential to facilitating the effective role of persons with disabilities as direct and indirect participants, including as witnesses, in all legal proceedings, including at the investigative and other preliminary stages, and highlighting the key role of States in promoting appropriate training for those working in the field of administration of justice, including police and prison staff, in order to help to ensure effective access to justice for persons with disabilities, as recognized in article 13 of the Convention,

Noting the cross-cutting nature of equality and non-discrimination in the 2030 Agenda for Sustainable Development, which has an impact on all the Sustainable Development Goals, noting in particular Goal 10 and the specific reference in target 16.3 to ensuring equal access to justice for all and in target 17.18, to increasing significantly the availability of high-quality, timely and reliable data disaggregated by, inter alia, disability and other characteristics relevant in national contexts, as a means to measure the advancement under the 2030 Agenda and to ensure that no one is left behind,

Noting also that, in 2019, the high-level political forum on sustainable development will review Goals 10 and 16 under the theme "Empowering people and ensuring inclusiveness and equality",

Welcoming the work of the Special Rapporteur on the rights of persons with disabilities, and taking note with appreciation of her reports,[1]

Welcoming also the work of the Committee on the Rights of Persons with Disabilities, and taking note with appreciation of its general comments,

Welcoming further the work undertaken by the task force on secretariat services, accessibility for persons with disabilities and use of information technology,

1. *Welcomes* the fact that, to date, 176 States and one regional integration organization have ratified or acceded to the Convention on the Rights of Persons with Disabilities, which has 160 signatories, and that 92 States have signed and 92 States have ratified or acceded to the Optional Protocol to the Convention, and calls upon those States and regional integration organizations that have not yet ratified or acceded to the Convention and the Optional Protocol to consider doing so as a matter of priority;

2. *Encourages* States that have ratified the Convention and have submitted one or more reservations to it to initiate a process to review regularly the effect and continued relevance of such reservations and to consider the possibility of withdrawing them;

3. *Welcomes* the reports of the Office of the United Nations High Commissioner for Human Rights on the thematic studies on the right of persons with disabilities to equality and non-discrimination,[2] and the right to access to justice on an equal basis with others,[3] and calls upon all stakeholders to consider the findings and recommendations in those studies with a view to their implementation, where appropriate;

4. *Calls upon* States to take effective and appropriate measures to remove all barriers preventing persons with disabilities from having effective access to justice on an equal basis with others, and to ensure the full enjoyment of equality and non-discrimination by persons with disabilities in the fields of equality and non-discrimination and access to justice, such as by:

(a) Guaranteeing equal recognition before the law of persons with disabilities and ensuring that they have the opportunity to exercise their legal capacity on an equal basis with others in all aspects of life, as recognized in article 12 of the Convention;

(b) Adopting laws and policies to address and reduce inequalities, including by facilitating accessibility, working actively to change negative perceptions and attitudes and pro . iding for inclusive environments;

(c) Taking specific measures to combat discrimination, particularly structural discrimination, and providing effective monitoring tools and remedies to improve the enforcement of these specific measures;

(d) Taking measures to ensure protection against all kinds of discrimination, including by integrating the Convention into national law, where appropriate, providing tools and guidelines to apply its provisions and innovative aspects, empowering persons with disabilities with regard to their rights, building the capacity of public officials, including judges and monitoring agents, and ensuring effective remedies and proper redress and reparation to victims of discrimination;

(e) Taking all appropriate measures to eliminate all situations of gender-based discrimination against women and girls with disabilities of all ages, who face an increased vulnerability to violence, abuse, discrimination and negative stereotyping;

(f) Improving or adopting legal and regulatory frameworks that identify those responsible for providing accommodation in all areas of the law, providing guidelines and protocols for their implementation, assuring flexibility in their policies and budgets to accommodate specific requests, and laying out appropriate procedures and criteria to objectively assess when a requested accommodation imposes a disproportionate or undue burden, ensuring a case-by-case approach;

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[1] A/HRC/37/56 and Adds. 1-2.

[2] A/HRC/34/26.

[3] A/HRC/37/25.

(g) Ensuring that the principles of equality and non-discrimination for persons with disabilities are integrated across the implementation of the 2030 Agenda for Sustainable Development;

(h) Amending civil, criminal and procedural laws that prevent persons with disabilities from directly or indirectly participating in judicial or administrative processes on an equal basis with others, including those measures that grant third-party representation in law or in fact without free and informed consent or by denying legal standing;

(i) Implementing laws and policies that ensure that information needed to defend rights is accessible to persons with disabilities on an equal basis with others and that free and affordable legal aid is provided to persons with disabilities as appropriate, in all areas of law;

(j) Repealing or revising laws that have the effect of denying the right to a fair trial to any person with disabilities, adopting laws to prohibit practices that act as a barrier to justice for persons with disabilities, and enacting and implementing anti-discrimination measures, including providing procedural accommodations when necessary in all legal proceedings;

(k) Reforming legislation that has the effect of depriving persons with disabilities of legal capacity on an equal basis with others, including legislation affecting the right to a fair trial, including the presumption of innocence, the right to be tried in person and defend oneself in person or through legal counsel of one's choosing, the right to examine witnesses for the prosecution and to obtain evidence and examine witnesses on one's behalf, and the right not to be compelled to testify or confess guilt, among other procedural safeguards and fair trial guarantees;

(l) Providing an effective remedy for violations of human rights, taking into consideration the specific circumstances of the person with disability, addressing systemic change, including acknowledgement of the facts and acceptance of responsibility as a component of satisfaction, and providing guidance for legal and policy reform and capacity-building as guarantees of non-repetition;

(m) Enabling persons with disabilities in their role as witnesses, jurors, experts, judges, lawyers or other interlocutors within the justice system to exercise their right to participate in public and political life on an equal basis with others;

(n) Providing training to judicial officers, lawyers and others, including forensic experts, prison staff and the police, on the human rights of persons with disabilities in order to overcome barriers in their effective access to justice, on an equal basis with others;

5. *Urges* States to take all appropriate measures to eliminate discrimination against women and girls with disabilities and to promote gender equality in order to ensure the equal enjoyment of their rights, in particular to equality and non-discrimination and access to justice on an equal basis with others;

6. *Also urges* States to take all appropriate measures to eliminate discrimination on the basis of gender and/or impairment by any person, organization or private enterprise, ensuring access to justice and accountability mechanisms and remedies for the effective implementation and enforcement of laws aimed at preventing and eliminating discrimination and violence against women and girls with disabilities;

7. *Encourages* States to engage in international cooperation efforts at all levels aimed at enhancing their national capacities to guarantee fully the right of persons with disabilities to equality and non-discrimination and access to justice on an equal basis with others, encourages the mobilization of public and private resources on a sustainable basis to mainstream the rights of persons with disabilities in development, and invites the Office of the High Commissioner and relevant United Nations agencies to consider ways to foster international cooperation activities in that regard;

8. *Also encourages* States to integrate in their reports to the high-level political forum on sustainable development advances made with regard to the rights of persons with disabilities as reflected in laws, policies and practices developed relevant to the commitments under the 2030 Agenda for Sustainable Development, and to develop human rights indicators and collect data disaggregated by age, sex and disability to inform those

indicators using the Washington Group on Disability Statistics short set of questions for disaggregation;

9. *Calls upon* States to ensure that all international cooperation is inclusive of persons with disabilities and does not contribute to creating new barriers for them;

10. *Also calls upon* States to consider becoming party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled;

11. *Decides* that its next annual interactive debate on the rights of persons with disabilities will be held at its fortieth session and that it will focus on article 26 of the Convention, on habilitation and rehabilitation, and will have international sign interpretation and captioning;

12. *Also decides* that an interactive debate on the rights of persons with disabilities will be held at its forty-third session, and that the debate will focus on article 8 of the Convention, on awareness-raising, and will have international sign interpretation and captioning;

13. *Requests* the Office of the High Commissioner to prepare its next annual thematic study on the rights of persons with disabilities on article 26 of the Convention, and to prepare its subsequent study on article 8 of the Convention, in consultation with States and other relevant stakeholders, regional organizations, the Special Rapporteur on the rights of persons with disabilities, civil society organizations, including organizations of persons with disabilities, and national human rights institutions, requiring contributions to be submitted in an accessible format, and requests that such stakeholder contributions, the studies themselves and an easy-to-read-version of them, be made available on the website of the Office of the High Commissioner, in an accessible format, prior to the fortieth session of the Human Rights Council;

14. *Encourages* the task force on secretariat services and accessibility for persons with disabilities to report orally to the Human Rights Council on its work and on the progress made on the implementation of its accessibility plan;

15. *Urges* States to consider further integrating and mainstreaming the perspective and rights of persons with disabilities into the work of the Human Rights Council;

16. *Encourages* representative organizations of persons with disabilities, civil society, national mechanisms as described in article 33 of the Convention, and national human rights institutions to participate actively in the debates referred to in paragraphs 11 and 12 above and in regular and special sessions of the Council and its working groups;

17. *Requests* the Secretary-General, the High Commissioner and United Nations offices to continue the progressive implementation of standards and guidelines for the accessibility of facilities and services of the United Nations system, taking into account relevant provisions of the Convention, and underlines that the Human Rights Council, including its Internet resources, should be fully accessible to persons with disabilities;

18. *Requests* the Secretary-General to continue to ensure that the work of the Office of the High Commissioner with respect to the rights of persons with disabilities and the Committee on the Rights of Persons with Disabilities are adequately resourced for the fulfilment of their tasks;

19. *Decides* to remain seized of the matter.

54th meeting
23 March 2018

[Adopted without a vote.]